

BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC)	D.T.E. 03-121
LIGHT COMPANY, COMMONWEALTH ELECTRIC)	
COMPANY, d/b/a NSTAR ELECTRIC)	
)	

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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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COMMENTS OF THE ATTORNEY GENERAL

I. INTRODUCTION

In this case, the three NSTAR Electric companies¹ petitioned the Department of Telecommunications and Energy (“DTE”) for approval to charge standby and supplemental service rates to their medium to large commercial and industrial customers who meet part of their electrical requirements with on-site generation (“OSG”). The Company indicated that the rates are designed to recover its costs for keeping distribution facilities available instantaneously whenever the customer’s OSG does not meet all of its load.

The Department is also investigating in this case generic issues such as: (1) what share of distribution costs standby rates should cover; (2) whether standby rates should be fixed or variable; (3) whether standby rates should reflect embedded and/or incremental costs; and (4) whether distribution companies should offer firm and non-firm standby service. *See NSTAR Electric*, D.T.E. 03-121, Notice (January 20, 2004); and *NSTAR Electric*, D.T.E. 03-121, Examination on Rochester Gas and Electric Corporation Standby Service Tariff, Service Classification No. 14 (April 20, 2004)(*hereinafter* “Rochester Tariff Memo”). The Department’s

¹ The petitioners are Boston Edison Company (“BEC”), Cambridge Electric Light Company (“Cambridge”), Commonwealth Electric Company (“Commonwealth”), together d/b/a NSTAR Electric (the “Company” or “NSTAR Electric”).

decision in this case may affect development of Distributed Generation in the Commonwealth.²

On June 7, 2004, some of the parties³ asked the Department to approve a Settlement Agreement (“Agreement”) that would resolve some issues related to NSTAR Electric’s petition (the “Petition”). The Settlement Agreement would create discounts and exemptions that appear to encourage the development of DG. It does not address all of the issues related to the Department’s investigation and does not ensure that all of the distribution system costs are recovered from the responsible customers.

II. PROCEDURAL HISTORY

On October 31, 2003, NSTAR Electric filed its Petition for Department approval pursuant to G.L. c. 164, §94, and 220 C.M.R §§ 5.00 *et seq.* On November 26, 2003, the Department suspended the operation of the tariffs until June 1, 2004. After the Company re-filed the tariffs on January 16, 2004, to permit additional investigation, the Department re-suspended the operation of the rates until August 1, 2004. On January 27, 2004, the Attorney General intervened pursuant to M.G.L. c. 12, §11E.

² Distributed Generation (“DG”) is defined in G.L. c. 164, § 1, (the Restructuring Act) as “a generation facility or renewable energy facility connected directly to distribution facilities or to retail customer facilities which alleviate [sic] or avoid [sic] transmission or distribution constraints or the installation of new transmission facilities or distribution facilities.” NSTAR Electric in its Petition uses the Restructuring Act definition to describe both OSG and “distributed generation.” The NSTAR Electric’s witness testified, however, that the OSG discussed in this proceeding should not be labeled DG because it does not relieve distribution constraints and the Company has to provide distribution infrastructure to serve that on-site generation load. Tr. 3, p. 393. Since the proposed tariffs do not apply exclusively to DG customers but to all OSG customers, the Attorney General will use the term on-site generation to describe these customers.

³ The parties proposing the Agreement include NSTAR Electric, Associated Industries of Massachusetts (“AIM”), the “Joint Supporters,” the Conservation Law Foundation (“CLF”), the Division of Energy Resources (“DOER”) and the Solar Energy Business Association of New England (“SEBANE”) (collectively the “Settling Parties”).

On February 10, 2004, the Department conducted a public hearing in Boston, convened a procedural conference and granted intervenor status to many entities.⁴ On February 12, 2004, the NE DG Coalition⁵ filed a motion to dismiss NSTAR Electric's Petition on the grounds that the proposed rates violate Department standards for establishing standby rates, Department regulations and Federal Energy Regulatory Commission ("FERC") regulations. On February 24, 2004, NSTAR Electric and the Attorney General each filed an opposition to the NE DG Coalition's motion. The ruling on this motion is still pending. The NE DG Coalition, jointly with DOER, the Joint Supporters and CLF, filed a second motion to dismiss NSTAR Electric's Petition on the grounds that the illustrative tariffs filed as part of the testimony of one of the Company's rebuttal witnesses (*See* Exhibit NSTAR-HCL-10) amounted to a new proposal, rendering the old proposed rates moot. These parties requested a new proceeding with a new rate suspension period running from April 21, 2004. The Company filed its opposition to the motion on April 26, 2004. The ruling on the motion is still pending.

⁴ The Department granted full intervenor status to Associated Industries of Massachusetts ("AIM"); the Boston Public Schools; Co-Energy America, Inc.; the Conservation Law Foundation ("CLF"); the Division of Energy Resources ("DOER"); FuelCell Energy, Inc. ("FCE"); Fitchburg Gas & Electric Light Company ("FG&E"); Low Income Weatherization and Fuel Assistance Network and Mass Community Action Program Directors Association ("MASSCAP"); Massachusetts Electric Company ("MECo"); National Association of Energy Service Companies, Inc.; the New England Distributed Generation Coalition (the "NE DG Coalition"); the Solar Energy Business Association of New England ("SEBANE"); Siemens Building Technologies, District One; the Energy Consortium ("TEC"); UTC Power, LLC; Western Massachusetts Electric Company ("WMECo"); the Western Massachusetts Industrial Customer Group ("WMICG"). The Department also granted limited participant status to Allied Utility Network, LLC; the E-Cubed Company, L.L.C.; Dgsolutions LLC; Energy Concepts Engineering, PC; Keyspan Energy Delivery New England ("Keyspan"); Pace Law School Energy Project ("Pace"); Plug Power, Inc.; Predicate, LLC; Wyeth Pharmaceutical, Inc.; and Constellation NewEnergy, Inc.

⁵ The NE DG Coalition consists of American DG, Inc.; Aegis Energy Services, Inc.; Office Power L.L.C.; Equity Office Properties Trust, Inc.; Northern Power Systems, Inc.; RealEnergy, Inc.; Tecogen Inc.; and Turbosteam Corporation.

On March 16, 2004, nine intervenors submitted prefiled testimony and exhibits of twelve witnesses, and on April 21, 2004, the Company filed rebuttal testimony and exhibits of three witnesses. Discovery was conducted on all witnesses. The Department held eight days of evidentiary hearings beginning on April 28, 2004 and ending May 13, 2004.

On June 2, 2004, the Department, at the request of the Settling Parties, suspended the briefing schedule due to on-going settlement negotiations. On June 7, 2004, the Settling Parties filed the Agreement with the Department for approval.

III. OVERVIEW

A. THE COMPANY'S ORIGINAL PROPOSAL

Under the original Petition, NSTAR Electric proposed to charge standby and supplemental service rates to its medium to large commercial and industrial customers who meet part of their electrical requirements with on-site generation ("OSG") greater than 60 KW. The standby component is based on the level of potential demand through the use of contract demand charges. Exh. NSTAR-HCL-1, pp. 3-4. The Company based its standby rates on the existing distribution and transmission tariff rates for a comparable non-standby customer who otherwise purchases all of its electricity from either the company or a third-party supplier. *Id.*, p. 16. The original proposal includes a fixed customer charge set at the same rate as a comparable non-standby customer, a fixed contract-demand charge that reflects the generating capability or expected output of the customer's generation unit, and a variable as-used demand charge. *Id.*, pp. 16-19.

The Company also proposed separate charges for supplemental service, designed to recover costs of actual delivered service for both the electricity load not provided by the

customer's own generation and the electricity demand in excess of the level provided by the customer's generating facilities.⁶

Under the original proposal, NSTAR Electric's customers had to begin satisfying all, or a portion of, their internal electric load from their own generating units after the effective date of the tariff. *Id.*, p. 20. Existing customers currently self-generating are "grandfathered" under the Company's proposal. Cambridge Electric Light Company filed new tariff schedules that close the availability of its existing standby, supplemental and maintenance service rate tariffs to new customers. *Id.*, pp. 21-22.

As part of its rebuttal testimony, the Company filed illustrative tariffs with modifications to the originally proposed tariffs. *See* Exh. NSTAR-HCL-10. These modifications to the Company's proposal include an exemption from the standby rates for customers who serve twenty percent (20%) of their own load and have generating units less than 500 KW. Exh. NSTAR-HCL-10.

B. THE TERMS OF THE PROPOSED SETTLEMENT AGREEMENT

The proposed settlement tariffs differ from the illustrative tariffs submitted by the Companies as Exhibit NSTAR-HCL-10 by: (1) limiting their application to customers with on-site generation ("OSG") greater than 250 kW in size, instead of the original 60 kW; (2) exempting customers who serve less than 30% of their internal load and have generating units

⁶ Customers with their own generating facilities are not required to take standby service. In addition to the specific exclusions proposed by the Company, customers who are not connected to the distribution system or run their generators in isolation from the power grid will not be subject to the rates and other terms of the proposed standby tariffs. Tr. 1, p. 24 and Tr. 5, pp. 819-820.

between 250 kW and 1000kW; (3) exempting most renewable energy technologies⁷, with fewer exemptions for fuel cells;⁸ (4) reducing the standby demand charge for Cambridge and Commonwealth OSG customers by 15 % and for BECo OSG customers by 20% during June through September and 10% during October through May; (5) extending the date that generation units that become operational would be “grandfathered” to December 31, 2004 (December 31, 2005, for certain public schools, with binding financial commitments in place as of December 31, 2004); and (6) adding specific provisions to address: (a) circumstances that would reduce the level of contract demand, (b) the installation of new generation, (c) providing interruptible service and (d) providing for good-faith negotiations and special contracts for customers wishing to nominate total contract demand levels. Agreement §2.2, pp. 3-5.

The proposed Agreement also prevents the Company from filing a request with the Department to change the Availability terms of the standby tariffs for effect before August 1, 2008.⁹ Agreement § 2.3, p. 6. The proposed Agreement also allows that, if the Availability terms of the standby tariffs change at any time on or after August 1, 2008, any customer with on-

⁷ G.L. c. 40J, § 4E(f)(1) lists the following as “renewable energy technologies”: solar photovoltaic and solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; low emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse derived fuel; and storage and conversion technologies connected to qualifying generation projects.

⁸ Standby rates would apply to fuel cells larger than 2,000 kW or if the combined capacity of fuel cells installed in NSTAR Electric’s service territory exceeds an aggregate of 10,000 kW. Agreement § 2.2(e), pp. 4-5.

⁹ However, the rates set forth for Standby and Supplemental service may change before August 1, 2008 consistent with any rate changes that become effective for the rate schedules that would otherwise apply to standby customers. Agreement §2.3, p. 6.

site generation that comes on line before August 1, 2008 and that is not required to take service for that on-site generation under the Availability terms of these rates, will not be required to take standby service for that on-site generation because of a change in the Availability terms. *Id.* § 2.4, pp. 6-7.

IV. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in the Company's filing and other record evidence to ensure that the settlement is consistent the public interest. *Western Massachusetts Electric Company*, D.P.U. 92-13, p. 7 (1992); *see Massachusetts Electric Company*, D.P.U. 91-205, p. 4 (1992); *Cambridge Electric Light Company*, D.P.U. 89-109, p. 5 (1989); *Eastern Edison Company*, D.P.U. 88-100, p. 9 (1989). In fully evaluating the Settlement's proposed impact in light of the evidence presented, the Department needs to determine if the Settlement provisions are consistent with Department policy and with those terms which would have been approved by the Department in the absence of a settlement. *Massachusetts Electric Company*, D.P.U. 91-205, p. 4 (1992).

When approving the terms under which a distribution company may offer discounts to customers, the Department will allow those discounts provided that the company demonstrates that: (1) the discounted rate exceeds the company's marginal costs of distribution; (2) a discount to one customer is not recoverable from remaining ratepayers; and (3) the electricity contract is consistent with the law and Department policies and precedent. *Standard of Review for Electric Contracts*, D.P.U./D.T.E. 96-39-A, p. 2, Letter Order (October 27, 1998).

V. ARGUMENT

The Department should approve standby rates that do not inappropriately discourage the development of on-site generation that will alleviate or avoid transmission or distribution constraints or the installation of new transmission or distribution facilities. The terms of the proposed Agreement are adequate to meet these goals in the short term and the Attorney General recommends approval of the Agreement. The Department should revisit these issues, however, during the Company's next general rate case, when a new cost of service study is performed, in order to avoid perpetuating any existing cross-subsidies or possibly creating new ones. Because of all the discounts¹⁰ and other special tariff provisions offered to OSG customers by the Company, the proposed Agreement does not address how all costs of distribution and transmission service will be recovered.

A. THE SETTLEMENT STANDBY TARIFFS SHOULD ONLY BE TEMPORARY.

The Department should approve the Agreement only if the rates in the settlement standby tariffs are temporary. Traditionally, the Department bases rates on approved revenue requirements and allocates costs to classes based on approved cost of service studies. NSTAR Electric bases the proposed standby rates on the otherwise available rate schedule. Tr. 1, p. 47. Current customers are responsible for the Company's recovery of its infrastructure costs under a cost-based approved rate schedule. Tr. 1, p. 89. The Department approved the currently effective rates, which are the basis for the proposed standby rates, based on an approved cost of

¹⁰ The discounts provided in the Agreement include not only rate reductions, but also specific exemptions contained in the availability provisions. *See* Agreement §2.2. These exemptions are equivalent to 100% discounts.

service study. The Department deemed the currently effective rates to be appropriate in terms of interclass rate-setting and rate design at the time they were approved. Tr. 1, p. 91.

This approval, however, occurred many years ago, before the restructuring of the electric industry. In that time, the Company has changed from a vertically integrated generation, transmission and distribution company to a distribution-only company.¹¹ The Department should only approve temporary rates for standby service outside of an adjudicated fully allocated revenue requirements rate case. The Company's next rate case is the appropriate time to develop a more permanent rate design. The settlement standby rates should remain in effect only until the Company's next rate case.

The Agreement calls for a permanent exemption for customers who have operational OSG by August 1, 2008. *See* Agreement, § 2.4, p. 6. This permanent exemption for those customers would be at the expense of other customers in the class, including those who install OSG after August 1, 2008. The exemption applies to a class of customers that does not exist today, and so the Department cannot estimate any impact on other customers' rates. This may result in unjust and unreasonable rates. This proposal would be contrary to Department precedent that allows customers to be grandfathered only for the full term as described in the tariff or agreement. *Commonwealth Electric Company*, D.P.U. 93-41, p. 36 (1993); *Fitchburg Gas and Electric Company*, D.T.E. 98-51, p. 150.

¹¹ The Department last approved an embedded cost of service study for BECo in 1992. *Boston Edison Company*, D.P.U. 92-92. In 1995, as part of the electric industry restructuring, all three of NSTAR Electric's companies, while unbundling rates, "backed into" the distribution rates using 1995 information. *See* Tr. 3, pp. 333-339.

B. THE SETTLEMENT STANDBY TARIFFS SHOULD INCLUDE PROVISIONS FOR RECOVERY OF TRANSITION COSTS.

Transition costs are investment costs incurred by the Company prior to 1996 (stranded costs). The Department, pursuant to the Restructuring Act, should require the Company to recover transition charges¹² as a fixed charge component of the standby tariffs rather than on the proposed as-used basis. G.L. c. 164, §§(b) and (e). The Department determined that the transition charge should be based on a uniform cent/kilowatthour basis and allowed rate design deviations in order to achieve the mandated discounts for all customers. *See Boston Edison Company*, D.P.U./D.T.E. 96-23 (1998); *Electric Industry Restructuring*, D.P.U. 95-30 (1995). The settlement standby rate tariffs do not recover the transition charge in a non-bypassable manner because they recover transition costs on an as-used basis instead of as a component of the supplemental tariffs.¹³ *See Boston Edison Company* M.D.T.E. Nos. 136A (Settlement) and 138 (Settlement); *Cambridge Electric Light Company* M.D.T.E. Nos. 237C (Settlement), 238C (Settlement), 239C (Settlement) 254B (Settlement) and 255B (Settlement); *Commonwealth Electric Company* M.D.T.E. Nos. 337A (Settlement) and 338A (Settlement). This results in the

¹² The transition charge is a non-bypassable charge used to pay for unrecovered fixed costs for generation-related assets and obligations prudently incurred prior to January 1, 1996. G.L. c. 164, §§ (b)(1) and (e).

¹³ Similarly, the Company will not recover transmission costs allocated to the standby customers unless those customers pay those costs in a fixed charge. Tr. 6, pp. 1072-73. This is yet another discount. A contract demand transmission charge is the appropriate vehicle for recovering costs specific to the individual customer since the utility incurs costs to provide the “local” transmission and distribution facilities necessitated by that customer’s peak demand. Exh. JS-NSTAR-1-2 C (NYPSC Case No. 02-E-0551, Rochester Gas & Electric Order), p. 6; *See* Exh. AG-2 (NYPSC Case 99-E-1470, Opinion No. 01-4, Order and Opinion Approving Guidelines For the Design of Standby Rates). Consistent with the approved transmission charge in Cambridge’s current standby tariffs (M.D.T.E. No. 237C), the Department should require that the settlement standby rate tariffs include a contract demand transmission charge.

shifting of transition costs to other customers, another example of the many discounts available to OSG customers in the settlement standby tariffs, the cost of which will be shifted by the Company to other members of the class or to other classes.¹⁴ Tr. 7, p. 1183. The Department should require the settlement standby rate tariffs to include the non-bypassable transition charge.¹⁵ If the Department does not require the settlement tariffs to include a Contract Demand based transition charge, it should order that the reconciliation for the otherwise applicable rate class includes the cost recovery shortfall associated with the related standby class.

C. THE DISCOUNTS IN THE SETTLEMENT AGREEMENT SHOULD NOT BE RECOVERABLE FROM OTHER RATEPAYERS.

The Agreement provides for many discounts and exemptions for the Company's OSG customers. *See* Agreement §2.2. By increasing the threshold percentage of internal load served by OSG and increasing the size of the OSG units that will be subject to standby rates, the Agreement allows more OSG customers to avoid the distribution costs for which the Company had deemed them responsible in the originally proposed standby rates. This causes costs to be

¹⁴ Unlike the exclusion of transmission and transition charges from the proposed contract demand based charges, which results in a direct and immediate subsidy of standby customers by other customers, the exclusion of an administrative fee does not result in a direct and immediate consumer subsidy, but rather a potential under-recovery of utility costs from standby customers. It is a potential under-recovery only in the sense that there is an expected ebb and flow of costs that the Department has recognized in setting rates. If the Department is concerned that the proposed rates would result in the under-recovery of prudently incurred costs, it should require that the settlement standby rate tariffs include an administrative fee, consistent with its approved administrative fees in Cambridge's current standby tariffs (M.D.T.E. No. 237C) and certain NSTAR Electric special contracts (Exh. DTE-2-1).

¹⁵ A contract demand transition charge is not the same as an exit fee. The transition costs are stranded costs brought about by the electric industry restructuring. Exit fees are fees paid by a departing customer that are equal to amount of access charge payments that the departing customer would have paid but for operation of self-generating equipment. *Cambridge Electric Light Company*, D.T.E. 98-24, p. 10 (1998). The Department has the discretion whether to assess an exit fee, whereas the transition charge is non-bypassable by law. *Id.*; G.L. c. 164, §§ (b)(1) and (e).

shifted onto other non-OSG customers in the same class.

Similarly, the discounts given to OSG customers who are subject to the standby rates (Agreement § 2.2(g), p. 5) require the Company to recover that shortfall in order to meet revenue requirements. Consistent with its precedent, the Department should not allow distribution companies to recover a discount given to one customer from remaining customers. *Standard of Review for Electric Contracts*, D.P.U. 96-39-A, p. 2, Letter Order (October 27, 1998); *Massachusetts Electric Company*, D.P.U. 95-40, p. 142-143 (1995).

D. THE DEPARTMENT SHOULD REQUIRE THE COMPANY TO PERFORM STUDIES THAT ANALYZE THE IMPACT OF ON-SITE GENERATION ON THE DISTRIBUTION SYSTEM.

The Department should not only require that the settlement standby rate tariffs recover all appropriate costs, it should also require the Company (and all of the other utilities) to immediately begin collecting data to identify OSG characteristics in order to support a separate OSG class or classes or support the inclusion of OSG customers in the otherwise applicable rate classes in the next cost of service studies used to design the Company's rates.¹⁶

The future cost allocation studies for OSG customers must be accurate to avoid any potential cross-subsidization. The Company admits that it has very little knowledge of the operating characteristics of existing OSG and the impact OSG has on distribution system costs.

¹⁶ The Company has not made it clear how it will determine whether a customer qualifies for the "percentage of load served" exemption. The settlement tariffs indicate that power supplied by the customer's own generators is metered only when that customer is served under the standby rates. See Boston Edison Company M.D.T.E. Nos. 136A (Settlement) and 138 (Settlement); Cambridge Electric Light Company M.D.T.E. Nos. 237C (Settlement), 238C (Settlement), 239C (Settlement) 254B (Settlement) and 255B (Settlement); Commonwealth Electric Company M.D.T.E. Nos. 337A (Settlement) and 338A (Settlement). The Department should order the Company to clarify settlement tariff provisions and install meters to monitor the total load of any OSG customer who does not qualify for net-metering.

Tr. 1, pp. 77-79; Tr. 1, pp. 99-100; Exh. AG-1-20; Tr. 2, pp. 289-290; Tr. 7, 1187, 1217. As a result, the Company has developed the proposed rates assuming that OSG customers impose the same costs on the distribution system as similar all-requirements customers. Tr. 1, pp. 147-148. The Department should require all of the utilities to begin collecting data immediately on all OSG currently on the distribution system, regardless of size, in order to compare those characteristics to similar all-requirements customers. With that information, the utilities can determine what specific benefits this class of customers brings to the distribution system and design appropriate standby rates and future cost of service studies. The data collected should include, but not be limited to, the relationship between nameplate rating and distribution capacity requirement; load profiles, both seasonal and time of use; load response capabilities; ability to affect line losses; OSG effects on reactive power; other benefits of OSG to the distribution system; and costs unique to OSG, such as safety requirements, communications, metering and billing service needs that are outside of the average all requirements customers' requirements.

VI. CONCLUSION

For these reasons, the Attorney General asks the Department to approve the Settlement Agreement consistent with the proposed modifications and to implement the proposed recommendations.

Respectfully submitted,

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